



MOTION PICTURE ASSOCIATION  
OF AMERICA, INC.

## The DMCA Serves Consumers by Protecting Digital Content

The purpose of the Digital Millennium Copyright Act (DMCA), enacted by an overwhelming majority of Congress in 1998, was to enable consumers to reap the full benefits of the digital age. Congress calculated that if creators of copyrighted works could meaningfully protect their digital content from theft, they would be more likely to make those works available in a variety of innovative ways. Thus, Congress made it illegal to traffic in hacking devices – the digital equivalent of burglary tools – “primarily designed or produced for the purpose of circumventing a technological measure that effectively controls access to a [copyrighted] work.” 17 U.S.C. 1201(a)(2).

The DMCA has been a tremendous success. Today, more Americans have more access than ever before to more of the fruits of American creativity. Movies are a prime example. People have flocked to buy and rent DVDs, which are protected by encryption. Movies are being made available online, through services like CinemaNow and Movielink, protected by Digital Rights Management (DRM). Digital “Video-on-Demand” offers cable customers greater choices of movies to watch at a time of their choosing. With accelerating download speeds, the expansion of HDTV, and other exciting technologies emerging as mainstream, consumers will soon be able to watch whatever high-quality, digital movies they want – whenever and wherever and however they want – delivered through a variety of convenient and affordable physical and online methods.

Some favor dismantling this system that is working so well by creating a loophole in the law to legalize any circumvention (hacking) device “capable of enabling significant noninfringing use.” But no circumvention device can discern fair use from foul, and breaking through encryption to put copyrighted materials “in the clear” makes the work vulnerable to unlimited copying for any purpose – leading inevitably to massive infringement. If creators are unable to meaningfully protect their works, the current explosion in digital offerings is bound to falter. Moreover, to ensure the public is being served by this system, the DMCA requires the Librarian of Congress to conduct a review every three years to determine whether technologies are being used in a way that impedes the noninfringing use of copyrighted works. In the six years since enactment of the DMCA, the Librarian of Congress has found the exact opposite to be true. As the Register of Copyrights recently noted before the Judiciary Committee, the findings of the most recent rulemaking are a “sign of the success of a digital marketplace that is providing the public with access to an ever-increasing array of copyrighted works in ways that were never before possible.”

One final point needs to be made. American intellectual property is the envy of the world, and a primary driver of our economy. Congress and the Administration have made tremendous strides in convincing other countries of the need to protect intellectual property in the digital age through adequate laws and effective enforcement. It would send precisely the wrong signal to our trading partners to weaken protection of intellectual property in the U.S. Why would other countries protect U.S. intellectual property if the U.S. undermines its own legal protections?

*David Green, Vice President and Counsel, Motion Picture Association of America*  
202-293-1966 [dgreen@mpaa.org](mailto:dgreen@mpaa.org) June 2004